

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

ARMANDO COLON,

Plaintiff,

v.

**9:04-CV-1029
(FJS/DRH)**

LESTER N. WRIGHT,

Defendant.

APPEARANCES

OF COUNSEL

ARMANDO COLON

82-A-3397

Auburn Correctional Facility

Post Office Box 618

Auburn, New York 13021

Plaintiff *pro se*

**OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL**

The Capitol

Albany, New York 12224-0341

Attorneys for Defendants

CHRISTINA L. ROBERTS-RYBA, AAG

SCULLIN, Senior Judge

ORDER

In a Report-Recommendation and Order dated February 7, 2007, Magistrate Judge Homer recommended that this Court grant Defendant's motion for summary judgment. *See* Dkt. No. 47. Plaintiff has filed objections to that recommendation. *See* Dkt. No. 48.

Specifically, Plaintiff argues that the Court should not grant Defendant's motion for summary judgment because, among other things, there is a genuine issue of fact concerning whether pegylated interferon and ribavirin treatment is the most effective treatment for relapsed

Hepatitis C patients and could have been prescribed in his case. *See, generally*, Dkt. No. 48.

Plaintiff contends that, by denying him this treatment in favor of another treatment that he deems less effective, there is a triable issue concerning whether Defendant exhibited “deliberate indifference” to his medical needs.

The Court has reviewed the file in its entirety and finds that Plaintiff's objections are without merit. There is no evidence in the record that the treatment Defendant administered to Plaintiff was inadequate. Therefore, even assuming that Defendant could have administered the non-FDA-approved drug that Plaintiff requested through an experimental program, Defendant's decision to administer a different, FDA-approved course of treatment does not demonstrate deliberate indifference. Plaintiff's disagreement with Defendant about his proper course of treatment does not rise to the level of a constitutional violation. Therefore, the Court hereby

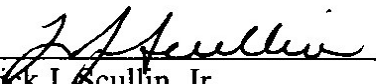
ORDERS that Magistrate Judge Homer's February 7, 2007 Report-Recommendation and Order is **ADOPTED IN ITS ENTIRETY for the reasons stated therein**; and the Court further

ORDERS that Defendant's motion for summary judgment is **GRANTED**; and the Court further

ORDERS that the Clerk of the Court shall enter judgment for Defendant and close this case.

IT IS SO ORDERED.

Dated: March 31, 2008
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Court Judge